

8<sup>th</sup> EDITION

STANDARD EDITION  
BUSINESS  
LAW

AND THE LEGAL ENVIRONMENT

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8<sup>th</sup> EDITION

STANDARD EDITION

# BUSINESS LAW

AND THE LEGAL ENVIRONMENT

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***Business Law and the Legal Environment—  
Standard Edition, 8th Edition***  
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and Patricia Sánchez Abril**

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Library of Congress Control Number: 2017948377

Student Edition:

ISBN: 978-1-337-40453-2

Loose-leaf Edition:

ISBN: 978-1-337-40466-2

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## NOTE FROM THE AUTHORS

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### Enhanced Digital Content—*MindTap*<sup>™</sup>

Our goal—and yours—is for the students to learn the material. With that singular goal in mind, Cengage has created an extremely useful tool for both instructors and students. *MindTap*<sup>™</sup> is a fully online, highly personalized learning experience combining readings, multimedia, activities, and assessments into a singular Learning Path. It integrates seamlessly with Learning Management Systems. *MindTap* guides students through their course with ease and engagement. Instructors can personalize the Learning Path by customizing Cengage resources and adding their own content via apps that integrate with *MindTap*.

**Our students who use *MindTap* are better prepared for, and earn better grades on, our exams.** We recognize that the online experience is as important to the students—and you—as the book itself. Thus, unlike other texts, we (the authors) have reviewed every question in the *MindTap* product to ensure that it meets the high standards of our book.

We have heard that business law instructors want to help students **Prepare** for class, **Engage** with the course concepts to reinforce learning, **Apply** these concepts in real-world scenarios, use legal reasoning and critical thinking to **Analyze** business law content, and **Evaluate** real business scenarios and their legal implications.

Accordingly, our *MindTap* product provides a five-step Learning Path designed to meet these critical needs while also allowing instructors to measure skills and outcomes with ease.

- **Prepare**—Interactive worksheets are designed to prepare students for classroom discussion by ensuring that they have read and understood the reading.
- **Engage**—Real-world videos with related questions help engage students by displaying the relevance of business law in everyday life.
- **Apply**—Brief hypothetical case scenarios help students practice spotting issues and applying the law in the context of short factual scenarios.
- **Analyze**—Case-problem analysis promotes deeper critical thinking and legal reasoning by building on acquired knowledge. These exercises guide students step by step through a case problem and then add in a critical thinking section based on “What If the Facts Were Different?” In a **new third section**, a writing component requires students to demonstrate their ability to forecast the legal implications of real-world business scenarios.
- **Evaluate**—New **business case** activities develop students’ *skills* to apply critical thinking and legal reasoning through relevant real-world business scenarios. These exercises give students the opportunity to advocate, evaluate, and make a decision through a variety of flexible assessment options including Discussion Questions, Multiple-Choice Questions, Short-Answer Essays, Group Work, and Ethical Dilemmas. Whether you have a large class, small class, teach online or in a traditional classroom setting, promote group work, or individual assignments, the *MindTap* Business Cases offer a variety of activity types to complement and enhance how YOU teach.

Each and every item in the Learning Path is assignable and gradable. Thus instructors have up-to-the-minute information on the class’ general understanding of concepts as well as

data on the performance of each individual student. Students also know where they stand—both individually and compared to the highest performers in the class. Thus, both faculty and students are less likely to face unpleasant surprises on exams.

*MindTap* also includes:

- **Case Collection** where instructors can find over 1,600 additional cases that were included in several previous editions of all of the Cengage Business Law or Legal Environment texts. These cases are searchable by name, year, state, and subject matter.
- **Adaptive Test Prep** for students, where they can generate their own practice quizzes with questions similar to those found on most exams.

To view a demo video and learn more about *MindTap*, please visit [www.cengage.com/mindtap](http://www.cengage.com/mindtap).

## The Beatty/Samuelson/Abril Difference

Our goal in writing this book was to capture the passion and excitement, the sheer enjoyment, of the law. Business law is notoriously complex, and, as authors, we are obsessed with accuracy. Yet this intriguing subject also abounds with human conflict and hard-earned wisdom, forces that we wanted to use to make this book sparkle. Look, for example, at Chapter 33 on corporations. A robust discussion of the nitty gritty of corporate governance is enlivened by court cases featuring intense personal conflict.

Once we have the students' attention, our goal is to provide the information they will need as business people and as informed citizens. Of course, we present the *theory* of how laws work, but we also explain when *reality* is different. To take some examples, traditionally business law textbooks have simply taught students that shareholders elect the directors of public companies. Even Executive MBA students rarely understand the reality of corporate elections. But our book explains the complexity of corporate power. The practical contracts chapter focuses not on the theory of contract law but on the real-life issues involved in making an agreement: Do I need a lawyer? Should the contract be in writing? What happens if the contract has an unclear provision or an important typo? What does all that boilerplate mean anyway?

Nobel Laureate Paul Samuelson famously said, "Let those who will write the nation's laws, if I can write its textbooks." As authors, we never forget the privilege—and responsibility—of educating a generation of business law students. Our goal is to write a business law text like no other—a book that is authoritative, realistic, and yet a pleasure to read.

**Strong Narrative.** The law is full of great stories, and we use them. It is easier to teach students when they come to class curious and excited. Every chapter begins with a story that is based in fact, to illustrate important issues. We also include stories in the body of the chapters. Look at Chapter 3 on dispute resolution. No tedious list of next steps in litigation, this chapter teaches the subject by tracking a double-indemnity lawsuit. An executive is dead. Did he drown accidentally, obligating the insurance company to pay? Or did the businessman commit suicide, voiding the policy? Students follow the action from the discovery of the body, through each step of the lawsuit, to the final appeal.

**Context.** Most of our students were not yet born when Bill Clinton was elected president. They come to college with varying levels of preparation; many arrive from other countries. We have found that to teach business law most effectively we must provide its context. In the chapter on employment discrimination, we provide a historical perspective to help students understand how the laws developed. In the chapter on securities laws, we discuss the impact of the depression on the major statutes. Only with this background do students grasp the importance and impact of our laws.



**Student Reaction.** Students have responded enthusiastically to our approach. One professor asked a student to compare our book with the one that the class was then using. This was the student's reaction: "I really enjoy reading the [Beatty] textbook, and I have decided that I will give you this memo ASAP, but I am keeping the book until Wednesday so that I may continue reading. Thanks! :-)"

This text has been used in courses for undergraduates, MBAs, and Executive MBAs, with students ranging in age from 18 to 65. This book works, as some unsolicited comments indicate:

**From verified purchasers on Amazon:**

- "If you have this textbook for your business law class, then you are in luck! This is one of the best and most helpful textbooks that I have ever had the pleasure of using. (I mostly just use my textbooks as a pillow.) I actually did enjoy reading this and learning the material. The author breaks down the concepts so they are easy to understand. Even if you hate law, if you put forth the effort to learn this, you should have no trouble at all learning and understanding the concepts."
- "I enjoyed this book so much that I will not be selling it back to the bookstore (or anyone) because I know that I will use the book for years."

**From undergraduates:**

- "This is the best textbook I have had in college, on any subject."
- "The textbook is awesome. A lot of the time I read more than what is assigned—I just don't want to stop."
- "I had no idea business law could be so interesting."

**From MBA students:**

- "Actually enjoyed reading the textbook, which is a rarity for me."
- "The law textbook was excellent through and through."

**From a Fortune 500 vice president, enrolled in an Executive MBA program:**

- "I really liked the chapters. They were crisp, organized, and current. The information was easy to understand and enjoyable."

**From business law professors:**

- "The clarity of presentation is superlative. I have never seen the complexity of contract law made this readable."
- "Until I read your book I never really understood UCC 2-207."
- "With your book, we have great class discussions."

**From a state supreme court justice:**

- "This book is a valuable blend of rich scholarship and easy readability. Students and professors should rejoice with this publication."

**Current.** This 8th edition contains more than 40 new cases. Most were reported within the last two or three years, and many within the last 12 months. The law evolves continually, and our willingness to toss out old cases and add important new ones ensures that this book—and its readers—remain on the frontier of legal developments.

**Authoritative.** We insist, as you do, on a law book that is indisputably accurate. To highlight the most important rules, we use bold print, and then follow with vivid examples written in clear, forceful English. We cheerfully venture into contentious areas, relying

on very recent decisions. Can a Delaware court order the sale of a successful business? Is discrimination based on attractiveness or sexual orientation legal? Is the list of names in a LinkedIn group a trade secret? What are the limits to free speech on social media? Where there is doubt about the current (or future) status of a doctrine, we say so. In areas of particularly heated debate, we footnote our work. We want you to have absolute trust in this book.

**Humor.** Throughout the text we use humor—judiciously—to lighten and enlighten. We revere the law for its ancient traditions, its dazzling intricacy, and its relentless, though imperfect, attempt to give order and decency to our world. But because we are confident of our respect for the law, we are not afraid to employ some levity, for the simple reason that humor helps retention. Research shows that the funnier or more original the example, the longer students will remember it. They are more likely to recall an intellectual property rule involving the copyrightability of yoga than a plain-vanilla example about a common widget.

## Features

Each feature in this book is designed to meet an essential pedagogical goal. Here are some of those goals and the matching feature.

### Exam Strategy

**GOAL: To help students learn more effectively and to prepare for exams.** In developing this feature, we asked ourselves: *What do students want?* The short answer is—a good grade in the course. How many times a semester does a student ask you, “What can I do to study for the exam?” We are happy to help them study and earn a good grade because that means that they will also be learning.

About six times per chapter, we stop the action and give students a two-minute quiz. In the body of the text, again in the end-of-chapter review, and also in the Instructor’s Manual, we present a typical exam question. Here lies the innovation: We guide the student in analyzing the issue. We teach the reader—over and over—how to approach a question: to start with the overarching principle, examine the fine point raised in the question, apply the analysis that courts use, and deduce the right answer. This skill is second nature to lawyers and teachers, but not to students. Without practice, too many students panic, jumping at a convenient answer, and leaving aside the tools they have spent the course acquiring. Let’s change that. Students love the Exam Strategy feature.

### You Be the Judge Cases

**GOAL: Get them thinking independently.** When reading case opinions, students tend to accept the court’s “answer.” But we strive to challenge them beyond that. We want students to think through problems and reach their own answers guided by sound logic and legal knowledge. The You Be the Judge features are cases that provide the facts of the case and conflicting appellate arguments. But the court’s decision appears only in the Instructor’s Manual. Because students do not know the result, class discussions are more complex and lively.

### Ethics

**GOAL: Make ethics real.** We include the latest research on ethical decision-making, such as ethics traps (why people make decisions they know to be wrong). We have also introduced the Giving Voice to Values curriculum, which focuses on the effective implementation of an ethics decision.

## End-of-Chapter Exam Review and Questions

**GOAL: Encourage students to practice!** At the end of the chapters, we provide a list of review points and several additional Exam Strategy exercises. We also challenge the students with 15 or more problems—Multiple-Choice Questions, Case Questions, and Discussion Questions. The questions include the following:

- *You Be the Judge Writing Problem.* Students are given appellate arguments on both sides of the question and then must prepare a written opinion.
- *Ethics.* This question highlights the ethics issues of a dispute and calls upon the student to formulate a specific, reasoned response.
- *CPA Questions.* For topics covered by the CPA exam, administered by the American Institute of Certified Public Accountants, the Exam Review includes questions from previous CPA exams.

Answers to the odd-numbered Multiple-Choice Questions and Case Questions are available in Appendix C of the book.

## Cases

**GOAL: Let the judges speak.** Each case begins with a summary of the facts and a statement of the issue. Next comes a tightly edited version of the decision, in the court's own language, so that students “hear” the law developing in the voices of our judges. In the principal cases in each chapter, we provide the state or federal citation, unless it is not available, in which case we use the LEXIS and Westlaw citations. We also give students a brief description of the court.

# TEACHING MATERIALS

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For more information about any of these ancillaries, contact your Cengage Consultant, or visit the Beatty Samuelson Abril Business Law website at [www.cengagebrain.com](http://www.cengagebrain.com).

**MindTap.** *MindTap* is a fully online, highly personalized learning experience combining readings, multimedia, activities, and assessments into a singular Learning Path. Instructors can personalize the Learning Path by customizing Cengage resources and adding their own content via apps that integrate into the *MindTap* framework seamlessly with Learning Management Systems. To view a demo video and learn more about *MindTap*, please visit [www.cengage.com/mindtap](http://www.cengage.com/mindtap).

**Instructor's Manual.** The Instructor's Manual, available on the Instructor's Support Site at [www.cengagebrain.com](http://www.cengagebrain.com), includes special features to enhance class discussion and student progress:

- Answers to You Be the Judge cases from the main part of the chapter and to the Exam Review questions found at the end of each chapter.
- Current Focus. This feature offers updates of text material.
- Additional cases and examples.

- **Exam Strategy Problems.** If your students would like more of these problems, there is an additional section of Exam Strategy problems in the Instructor's Manual.
- **Dialogues.** These are a series of questions-and-answers on pivotal cases and topics. The questions provide enough material to teach a full session. In a pinch, you could walk into class with nothing but the manual and use the Dialogues to conduct an effective class.
- **Action learning ideas.** Interviews, quick research projects, drafting exercises, classroom activities, and other suggested assignments get students out of their chairs and into the diverse settings of business law.

**Cengage Testing Powered by Cognero.** Cognero is a flexible online system that allows you to author, edit, and manage test bank content from multiple Cengage solutions; create multiple test versions in an instant; and deliver tests from your LMS, your classroom, or wherever you want.

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**Interaction with the Authors.** This is our standard: Every professor who adopts this book must have a superior experience. We are available to help in any way we can. Adopters of this text often call or email us to ask questions, offer suggestions, share pedagogical concerns, or inquire about ancillaries. One of the pleasures of writing this book has been this link to so many colleagues around the country. We value those connections, are eager to respond, and would be happy to hear from you.

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## ACKNOWLEDGMENTS

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The list of people who have contributed helpful comments and suggestions for this book is long. We are grateful to all of the reviewers and instructors from around the country who have helped us refine this book through all of its editions.

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To w.f.s., “*the fountain from the which  
my current runs*”

S.S.S.

To a.f.a., *with gratitude and love*

p.s.a.

# The Legal Environment

UNIT

1

# INTRODUCTION TO LAW

The Pagans were a motorcycle gang with a reputation for violence. Two of its rougher members, Rhino and Backdraft, entered a tavern called the Pub Zone, shoving their way past the bouncer. The pair wore gang insignia, in violation of the bar's rules. For a while, all was quiet, as the two sipped drinks at the bar. Then they followed an innocent patron toward the men's room, and things happened fast.

"Wait a moment," you may be thinking. "Are we reading a chapter on business law or one about biker crimes in a roadside tavern?" Both.

Law is powerful, essential, and fascinating. We hope this book will persuade you of all three ideas. Law can also be surprising. Later in the chapter, we will return to the Pub Zone (with armed guards) and follow Rhino and Backdraft to the back of the pub. Yes, the pair engaged in street crime, which is

hardly a focus of this text. However, their criminal acts will enable us to explore one of the law's basic principles—negligence. Should a pub owner pay money damages to the victim of gang violence? The owner herself did nothing aggressive. Should she have prevented the harm? Does her failure to stop the assault make her liable?

We place great demands on our courts, asking them to make our large, complex, and sometimes violent society into a safer, fairer, more orderly place. The *Pub Zone* case is a good example of how judges reason their way through the convoluted issues involved. What began as a gang incident ends up as a matter of commercial liability. We will traipse after Rhino and Backdraft because they have a lesson to teach anyone who enters the world of business.

**Should a pub owner pay money damages to the victim of gang violence?**



## 1-1 EXPLORING THE LAW

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### 1-1a The Role of Law in Society

**The strong reach of the law touches nearly everything we do, especially at work.** Consider a mid-level manager at Sublime Corp., which manufactures and distributes video games.

During the course of a day's work, she might negotiate a deal with a game developer (contract law). Before signing any deals, she might research whether similar games already exist, which might diminish her ability to market the proposed new game (intellectual property law). One of her subordinates might complain about being harassed by a coworker (employment law). Another worker may complain about being required to work long hours (administrative law). And she may consider investing her own money in her company's stock, but she may wonder whether she will get into trouble if she invests based on inside information (securities law).

It is not only as a corporate manager that you will confront the law. As a voter, investor, juror, entrepreneur, and community member, you will influence and be affected by the law. Whenever you take a stance about a legal issue, whether in the corporate office, in the voting booth, or as part of local community groups, you help to create the fabric of our nation. Your views are vital. This book will offer you knowledge and ideas from which to form and continually reassess your legal opinions and values.

**Law is also essential.** *Every* society of which we have any historical record has had some system of laws. For example, consider the Visigoths, a nomadic European people who overran much of present-day France and Spain during the fifth and sixth centuries A.D. Their code admirably required judges to be “quick of perception, clear in judgment, and lenient in the infliction of penalties.” It detailed dozens of crimes.

Our legal system is largely based upon the English model, but many societies contributed ideas. The Iroquois Native Americans, for example, played a role in the creation of our own government. Five major nations made up the Iroquois group: the Mohawk, Cayuga, Oneida, Onondaga, and Seneca. Each nation governed its own domestic issues. But each nation also elected “sachems” to a League of the Iroquois. The league had authority over any matters that were common to all, such as relations with outsiders. Thus, by the fifteenth century, the Iroquois had solved the problem of *federalism*: how to have two levels of government, each with specified powers. Their system impressed Benjamin Franklin and others and influenced the drafting of our Constitution, with its powers divided between state and federal governments.<sup>1</sup>

In 1835, the young French aristocrat Alexis de Tocqueville traveled through the United States, observing the newly democratic people and the qualities that made them unique. One of the things that struck de Tocqueville most forcefully was the American tendency to file suit: “Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.”<sup>2</sup> De Tocqueville got it right: For better or worse, we do expect courts to resolve many problems.

Not only do Americans litigate—they watch each other do it. Every television season offers at least one new courtroom drama to a national audience breathless for more cross-examination. Almost all of the states permit live television coverage of real trials. The most heavily viewed event in the history of television was the O. J. Simpson murder trial, in which

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<sup>1</sup>Jack Weatherford, *Indian Givers* (New York: Fawcett Columbine, 1988), pp. 133–150.

<sup>2</sup>Alexis de Tocqueville, *Democracy in America* (1835), Vol. 1, Ch. 16.

a famous football star was accused of killing his wife. In most nations, coverage of judicial proceedings is not allowed.<sup>3</sup>

**The law is a big part of our lives, and it is wise to know something about it.** Within a few weeks, you will probably find yourself following legal events in the news with keener interest and deeper understanding. In this chapter, we develop the background for our study. We look at where law comes from: its history and its present-day institutions. In the section on jurisprudence, we examine different theories about what “law” really means. And finally we see how courts—and students—analyze a case.

## 1-1b Origins of Our Law

It would be nice if we could look up “the law” in one book, memorize it, and then apply it. But the law is not that simple, and *cannot* be that simple, because it reflects the complexity of contemporary life. In truth, there is no such thing as “the law.” Principles and rules of law actually come from *many different* sources. This is so, in part, because we inherited a complex structure of laws from England.

Additionally, ours is a nation born in revolution, and created, in large part, to protect the rights of its people from the government. The Founding Fathers created a national government but insisted that the individual states maintain control in many areas. As a result, each state has its own government with exclusive power over many important areas of our lives. To top it off, the Founders guaranteed many rights to the people alone, ordering national *and* state governments to keep clear. This has worked, but it has caused a multilayered system, with 50 state governments and one federal government all creating and enforcing law.

### English Roots

England in the tenth century was a rustic agricultural community with a tiny population and very little law or order. Vikings invaded repeatedly, terrorizing the Anglo-Saxon peoples. Criminals were hard to catch in the heavily forested, sparsely settled nation. The king used a primitive legal system to maintain a tenuous control over his people.

England was divided into shires, and daily administration was carried out by a “shire reeve,” later called a sheriff. The shire reeve collected taxes and did what he could to keep peace, apprehending criminals and acting as mediator between feuding families. Two or three times a year, a shire court met; lower courts met more frequently. Today, this method of resolving disputes lives on as mediation, which we will discuss in Chapter 3.

Because there were so few officers to keep the peace, Anglo-Saxon society created an interesting method of ensuring public order. Every freeman belonged to a group of 10 freemen known as a “tithing,” headed by a “tithingman.” If anyone injured a person outside his tithing or interfered with the king’s property, all ten men of the tithing could be forced to pay. Today, we still use this idea of collective responsibility in business partnerships. All partners are personally responsible for the debts of the partnership. They could potentially lose their homes and all assets because of the irresponsible conduct of one partner. That liability has helped create new forms of business organization, including limited liability companies.

When cases did come before an Anglo-Saxon court, the parties would often be represented by a clergyman, by a nobleman, or by themselves. There were few professional lawyers. Each party produced “oath helpers,” usually 12 men, who would swear that one version of events was correct. The Anglo-Saxon oath helpers were forerunners of our modern jury of 12 persons.

In 1066, the Normans conquered England. William the Conqueror made a claim never before made in England: that he owned all of the land. The king then granted sections of his lands to his

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<sup>3</sup>Regardless of whether we allow cameras, it is an undeniable benefit of the electronic age that we can obtain information quickly. From time to time, we will mention websites of interest. Some of these are for nonprofit groups, while others are commercial sites. We do not endorse or advocate on behalf of any group or company; we simply wish to alert you to what is available.

favorite noblemen, as his tenants in chief, creating the system of feudalism. These tenants in chief then granted parts of their land to *tenants in demesne*, who actually occupied a particular estate. Each tenant in demesne owed fidelity to his lord (hence, “landlord”). So what? Just this: Land became the most valuable commodity in all of England, and our law still reflects that. One thousand years later, American law still regards land as special. The Statute of Frauds, which we study in the section on contracts, demands that contracts for the sale or lease of property be in writing. And landlord–tenant law, vital to students and many others, still reflects its ancient roots. Some of a landlord’s rights are based on the 1,000-year-old tradition that land is uniquely valuable.

In 1250, Henry de Bracton (d. 1268) wrote a legal treatise that still influences us. *De Legibus et Consuetudinibus Angliae* (*On the Laws and Customs of England*), written in Latin, summarized many of the legal rulings in cases since the Norman Conquest. De Bracton was teaching judges to rule based on previous cases. He was helping to establish the idea of **precedent**. **The doctrine of precedent, which developed gradually over centuries, requires that judges decide current cases based on previous rulings.** This vital principle is the heart of American common law. Precedent ensures predictability. Suppose a 17-year-old student promises to lease an apartment from a landlord, but then changes her mind. The landlord sues to enforce the lease. The student claims that she cannot be held to the agreement because she is a minor. The judge will look for precedent, that is, older cases dealing with the same issue, and he will find many holding that a contract generally may not be enforced against a minor. That precedent is binding on this case, and the student wins. **The accumulation of precedent, based on case after case, makes up the common law.**

Today’s society is dramatically different from that of medieval English society. But interestingly, legal disputes from hundreds of years ago are often quite recognizable today. Some things have changed but others never do.

Here is an actual case from more than six centuries ago, in the court’s own language. The plaintiff claims that he asked the defendant to heal his eye with “herbs and other medicines.” He says the defendant did it so badly that he blinded the plaintiff in that eye.



Medieval tenants in demesne harrowing, plowing, and seeding a field.

North Wind / North Wind Picture Archives

#### Precedent

The tendency to decide current cases based on previous rulings

#### Common law

Judge-made law

## The Oculist’s Case (1329)

LI MS. Hale 137 (1), fo. 150, Nottingham<sup>4</sup>

**Attorney Launde [for defendant]:** Sir, you plainly see how [the plaintiff claims] that he had submitted himself to [the defendant’s] medicines and his care; and after that he can assign no trespass in his person, inasmuch as he submitted himself to his care: But this action, if he has any, sounds naturally in breach of covenant. We demand [that the case be dismissed].

**Excerpts from Judge Denum’s Decision:** I saw a Newcastle man arraigned before my fellow justice and me for the

death of a man. I asked the reason for the indictment, and it was said that he had slain a man under his care, who died within four days afterwards. And because I saw that he was a [doctor] and that he had not done the thing feloniously but [accidentally] I ordered him to be discharged. And suppose a blacksmith, who is a man of skill, injures your horse with a nail, whereby you lose your horse: You shall never have recovery against him. No more shall you here.

Afterwards the plaintiff did not wish to pursue his case any more.

<sup>4</sup>J. Baker and S. Milsom, *Sources of English Legal History* (London: Butterworth & Co., 1986).

This case from 1329 is an ancient medical malpractice action. Attorney Launde does not deny that his client blinded the plaintiff. He claims that the plaintiff has brought the wrong kind of lawsuit. Launde argues that the plaintiff should have brought a case of “covenant”; that is, a lawsuit about a contract.

Judge Denum decides the case on a different principle. He gives judgment to the defendant because the plaintiff voluntarily sought medical care. He implies that the defendant would lose only if he had attacked the plaintiff. As we will see when we study negligence law, this case might have a different outcome today. Note also the informality of the judge’s ruling. He rather casually mentions that he came across a related case once before and that he would stand by that outcome. The idea of precedent is just beginning to take hold.

## Law in the United States

The colonists brought with them a basic knowledge of English law, some of which they were content to adopt as their own. Other parts, such as religious restrictions, were abhorrent to them. Many had made the dangerous trip to America precisely to escape persecution, and they were not interested in recreating their difficulties in a new land. Finally, some laws were simply irrelevant or unworkable in a world that was socially and geographically so different. American law ever since has been a blend of the ancient principles of English common law and a zeal and determination for change.

During the nineteenth century, the United States changed from a weak, rural nation into one of vast size and potential power. Cities grew, factories appeared, and sweeping movements of social migration changed the population. Changing conditions raised new legal questions. Did workers have a right to form industrial unions? To what extent should a manufacturer be liable if its product injured someone? Could a state government invalidate an employment contract that required 16-hour workdays? Should one company be permitted to dominate an entire industry?

In the twentieth century, the rate of social and technological change increased, creating new legal puzzles. Were some products, such as automobiles, so inherently dangerous that the seller should be responsible for injuries even if no mistakes were made in manufacturing? Who should clean up toxic waste if the company that had caused the pollution no longer existed? If a consumer signed a contract with a billion-dollar corporation, should the agreement be enforced even if the consumer never understood it? New and startling questions arise with great regularity. Before we can begin to examine the answers, we need to understand the sources of contemporary law.

## 1-2 SOURCES OF CONTEMPORARY LAW

Throughout the text, we will examine countless legal ideas. But binding rules come from many different places. This section describes the significant categories of laws in the United States.

### 1-2a United States Constitution

America’s greatest legal achievement was the writing of the United States Constitution in 1787. It is the supreme law of the land.<sup>5</sup> Any law that conflicts with it is void. This federal Constitution does three basic things. First, it establishes the national government

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<sup>5</sup>The Constitution took effect in 1788, when 9 of 13 colonies ratified it. Two more colonies ratified it that year, and the last of the 13 did so in 1789, after the government was already in operation. The complete text of the Constitution appears in Appendix A.

of the United States, with its three branches. Second, it creates a system of checks and balances among the branches. And third, the Constitution guarantees many basic rights to the American people.

## Branches of Government

The Founding Fathers sought a division of government power. They did not want all power centralized in a king or in anyone else. And so, the Constitution divides legal authority into three pieces: legislative, executive, and judicial power.

*Legislative power* gives the ability to create new laws. In Article I, the Constitution gives this power to the Congress, which is comprised of two chambers—a Senate and a House of Representatives. Voters in all 50 states elect representatives who go to Washington, D.C., to serve in the Congress and debate new legal ideas.

The House of Representatives has 435 voting members. A state's voting power is based on its population. States with large populations (Texas, California, Florida) send dozens of representatives to the House, while sparsely populated states (Wyoming, North Dakota, Delaware) send only one. The Senate has 100 voting members—two from each state.

*Executive power* is the authority to enforce laws. Article II of the Constitution establishes the president as commander in chief of the armed forces and the head of the executive branch of the federal government.

*Judicial power* gives the right to interpret laws and determine their validity. Article III places the Supreme Court at the head of the judicial branch of the federal government. Interpretive power is often underrated, but it is often every bit as important as the ability to create laws in the first place. For instance, in *Roe v. Wade*, the Supreme Court ruled that privacy provisions of the Constitution protect a woman's right to abortion, although neither the word "privacy" nor "abortion" appears in the text of the Constitution.<sup>6</sup>

At times, courts void laws altogether. For example, in 2016, the Supreme Court struck down a Texas law regulating abortion clinics and the doctors who worked in them. The Court found that those rules created an undue burden for Texas women by causing many clinics to close and making abortions unreasonably difficult to obtain.<sup>7</sup>

## Checks and Balances

The authors of the Constitution were not content merely to divide government power three ways. They also wanted to give each part of the government some power over the other two branches. Many people complain about "gridlock" in Washington, but the government is slow and sluggish by design. The Founding Fathers wanted to create a system that, without broad agreement, would tend towards inaction.

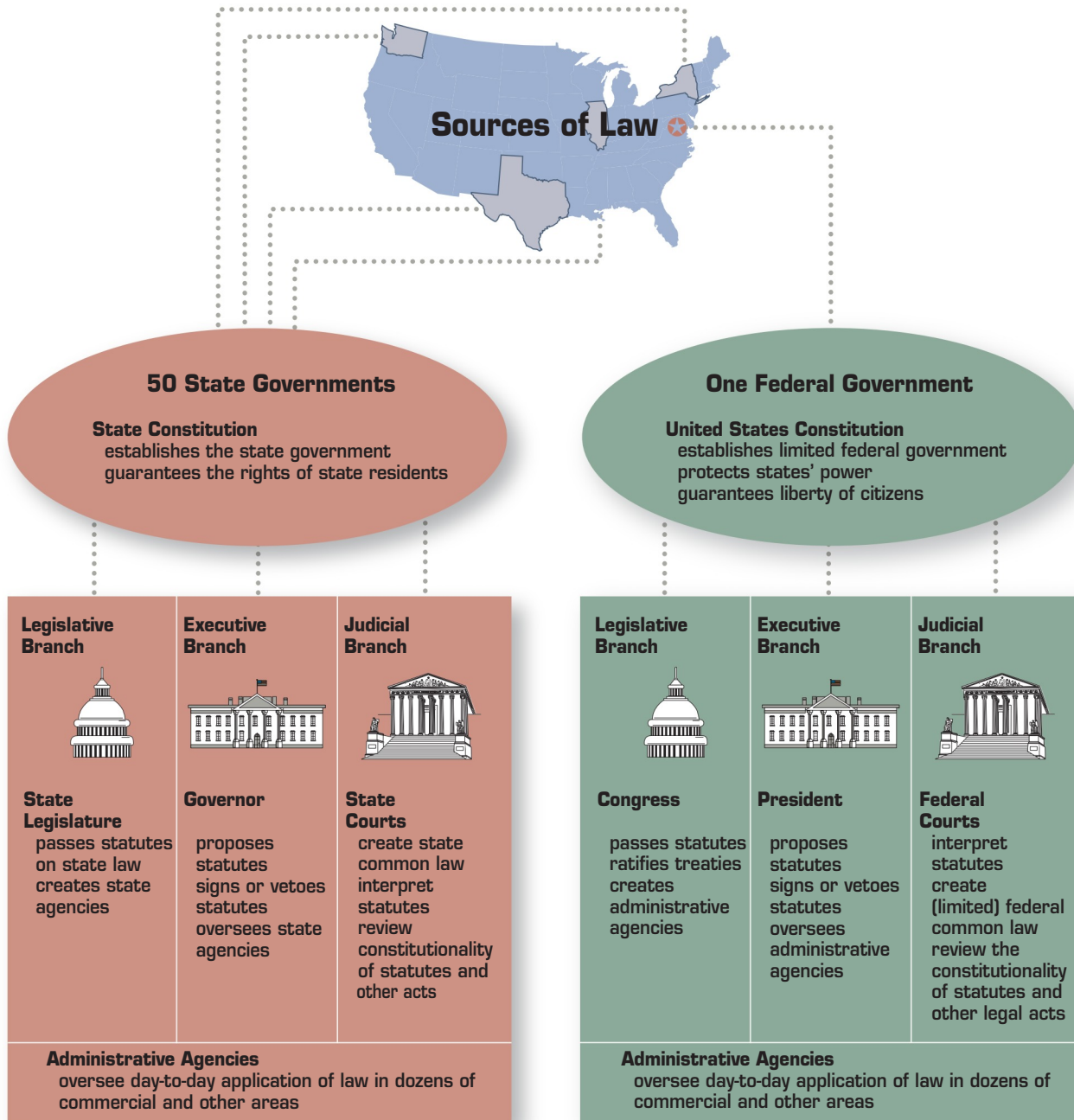
The president can veto Congressional legislation. Congress can impeach the president. The Supreme Court can void laws passed by Congress. The president appoints judges to the federal courts, including the Supreme Court, but these nominees do not serve unless approved by the Senate. Congress (with help from the 50 states) can override the Supreme Court by amending the Constitution. The president and the Congress influence the Supreme Court by controlling who is placed on the court in the first place.

Many of these checks and balances will be examined in more detail later in this book, starting in Chapter 4.

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<sup>6</sup>*Roe v. Wade*, 410 U.S. 113 (1973).

<sup>7</sup>*Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).



*Federal Form of Government. Principles and rules of law come from many sources. The government in Washington creates and enforces law throughout the nation. But 50 state governments exercise great power in local affairs. And citizens enjoy constitutional protection from both state and federal government. The Founding Fathers wanted this balance of power and rights, but the overlapping authority creates legal complexity.*

## Fundamental Rights

The Constitution also grants many of our most basic liberties. For the most part, those liberties are found in the amendments to the Constitution. The First Amendment guarantees the rights of free speech, free press, and the free exercise of religion. The Fourth, Fifth, and